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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 RESERVOIR MEDIA MANAGEMENT,
4 INC.,

Plaintiff,

5 v.

13 Civ. 1847 (JLC)

6 CRAZE PRODUCTIONS, HIPHOPLAND,
7 LTD, and SAM KLEINMAN,

8 Conference

9 Defendants.

10 -----x

11 New York, N.Y.
12 February 3, 2017
11:00 a.m.

13 Before:

14 HON. JAMES L. COTT,

15 Magistrate Judge

16 APPEARANCES

17 LOEB & LOEB, LLP
Attorneys for Plaintiffs
18 BY: BARRY I. SLOTNICK
CHENG L. CHEN

19 JUDAH S. SHAPIRO
20 Attorney for Defendants

21 Also Present Via Telephone: SAM KLEINMAN Pro Se
22
23
24
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(Case called)

THE COURT: By my count there are three different applications that are in front of me this morning, and obviously, I'm new to the case, but I've reviewed the docket. Let me tell you where I think we are, and then you can tell me how you think we need to proceed. I have Mr. Shapiro's motion to withdraw, which has been on the docket for some time, and I guess what I'm going to say is it's being renewed at this time effectively, although it was never dropped per se, as I understand it. I'll come back to that in a minute.

Let me tell you the three things that I think we have to deal with. The first is the motion to withdraw. The second is Reservoir's application to hold the defendants in contempt, and the third is Mr. Kleinman's, I'm going to characterize it as a motion or application to set aside the settlement in some way, which I think at least he seems to suggest in his February 2 letter to the Court.

Let me ask Mr. Shapiro, Mr. Slotnick and Ms. Chen, have you all seen his February 2 letter to the Court?

MR. SLOTNICK: Yes, your Honor.

MR. SHAPIRO: Yes, your Honor. I just want to note I did receive exhibits, but the numbers were off.

THE COURT: I think the same for the Court.

Let me start with the motion to withdraw, and this is how I see it.

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1 Mr. Shapiro, you made a motion to withdraw in advance
2 of the settlement conference before Judge Maas back in 2015.

3 MR. SHAPIRO: Right.

4 THE COURT: At that time Mr. Kleinman filed opposition
5 to the motion and said that he would be prejudiced by your
6 withdrawal at that time.

7 MR. SHAPIRO: Right.

8 THE COURT: I don't believe the plaintiff took a
9 position with respect to that application, and you ended up
10 participating in the settlement conference before Judge Maas
11 which resulted in a settlement.

12 MR. SHAPIRO: Right.

13 THE COURT: Mr. Kleinman, you participated in the
14 settlement conference, but you participated by phone -- for
15 medical reasons, you were not allowed to travel at that time --
16 at the conclusion of which there was a proceeding before Judge
17 Maas and a transcript made, which is at docket No. 1 16, which
18 I have reviewed. At the conclusion of that proceeding,
19 essentially Judge Maas indicated to Mr. Shapiro that if there
20 was ever a need to have the motion formally adjudicated he
21 would do so and grant it, but given that the case had settled,
22 I think, although I don't know that he used this exact
23 phrasing, that he thought that the motion effectively had been
24 mooted by the fact that the case had been resolved.

25 It's clear to me from the record that Judge Maas would

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1 have otherwise granted the motion, but he didn't, I assume,
2 because the parties negotiated and then filed a consent
3 judgment, and I think he probably assumed that would be the end
4 of all of this.

5 So far am I accurate, Mr. Shapiro?

6 MR. SHAPIRO: That is accurate.

7 THE COURT: Is there anything else I've missed up to
8 that point in time?

9 MR. SHAPIRO: There is actually one little fact.
10 There wasn't a court reporter at that hearing.

11 THE COURT: There wasn't a court reporter at the
12 hearing before Judge Maas?

13 MR. SHAPIRO: Right. There was some discussion before
14 we actually had the mediation, I believe. The judge said, I
15 think, that I'm granting your motion, and I kind of volunteered
16 to act as attorney for the mediation for the defendants.

17 THE COURT: There is nothing in the transcript that
18 I've seen that suggested that Judge Maas in fact granted the
19 motion. You're saying he actually granted it?

20 MR. SHAPIRO: I would say that's a little overstated;
21 I think what happened is essentially the same thing he said in
22 the transcript. He had actually informed Mr. Kleinman that he
23 was going to grant my motion, and then the mediation took
24 place, and then we went on the record. That was referred to
25 actually in the transcript. He actually said, when he said I'm

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1 clearly entitled to be relieved, when he says "I've already
2 told Mr. Kleinman I'm going to grant it," I think that actually
3 occurred, if I'm not mistaken.

4 THE COURT: The language on page 6 of the transcript
5 says, "Clearly, you're entitled to be relieved. If at some
6 point you want me to consider that motion, let me know that,
7 and I've already told Mr. Kleinman I'm going to grant it."

8 MR. SHAPIRO: Correct.

9 THE COURT: But that's not granting it.

10 MR. SHAPIRO: Correct.

11 THE COURT: I still think technically speaking the
12 motion was never granted.

13 MR. SHAPIRO: I would believe technically you're
14 correct.

15 THE COURT: There is no order on the docket from Judge
16 Maas granting the motion.

17 MR. SHAPIRO: I agree with you.

18 THE COURT: It is a motion that is pending before me,
19 and I'm going to rule on it today. OK?

20 MR. SHAPIRO: OK.

21 THE COURT: Aside from that, what else do you want to
22 say?

23 MR. SHAPIRO: I think that's it for right now.

24 THE COURT: Mr. Slotnick, anything you want to say
25 about his application? If I'm not mistaken, you took no

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1 position with respect to it back in 2015, but you're now taking
2 the position, and you're opposing it because you're concerned
3 that if Mr. Shapiro goes off into the good night, you're going
4 to have a problem dealing with the defendants because they're
5 going to be unrepresented.

6 MR. SLOTNICK: Exactly, your Honor.

7 THE COURT: Make sure you speak into the microphone.

8 MR. SLOTNICK: I'm sorry, your Honor.

9 THE COURT: Mr.Kleinman, have you been able to hear
10 everybody so far?

11 MR. KLEINMAN: Yes. Thank you.

12 THE COURT: OK. Go ahead.

13 MR. SLOTNICK: Our concern is on several levels, and I
14 believe we expressed this off the record to Judge Maas a little
15 bit more than a year ago, that the settlement had a number of
16 components. In addition to the permanent injunction, it also
17 required a payment. If the payment were made by the end of
18 2016, it was one number. If there was no payment by the end of
19 2016, there would be a larger number. Our concern then and our
20 concern now is if in fact the defendants violated the consent
21 judgment, and frankly at the time we thought the only potential
22 for violation was nonpayment, that we needed to have someone on
23 whom we could serve papers to know that we were not violating
24 any of the defendant's due process rights. Frankly, I don't
25 think the thought ever occurred to us, or at least didn't occur

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1 to me, that the issue would be the violation of the permanent
2 injunction as well as not paying on the judgment.

3 THE COURT: Just to be clear, if I can interrupt, was
4 there no payment on the judgment?

5 MR. SLOTNICK: There was no payment on the judgment.

6 THE COURT: There are two violations you're alleging,
7 although you didn't allege the nonpayment in the letter to the
8 Court. Correct?

9 MR. SLOTNICK: Your Honor, I think that's right. I
10 think, to be fair, the consent judgment to some degree
11 anticipated that if there was no early payment, or payment
12 before the end of 2016, then the new number would be the higher
13 number. I guess technically that would not constitute an
14 aspect of contempt. However, now we have a situation in which,
15 by Mr. Kleinman's most recent submission to the Court, there
16 seem to be new issues that have arisen which would lead us to
17 believe that, A, we're entitled to have the Court reconsider
18 what the judgment number should be as part of the sanctions
19 motion.

20 THE COURT: To be clear, the consent judgment itself
21 by its terms does not discuss the monetary component of the
22 settlement, correct?

23 MR. SLOTNICK: I think that's correct.

24 THE COURT: That was done, as I understand it,
25 confidentially in the first instance, if I understood the

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1 transcript before Judge Maas, with the understanding that if it
2 ever came to enforcement, then it would no longer remain
3 confidential as far as the monetary terms were concerned.

4 MR. SLOTNICK: That's correct, your Honor.

5 THE COURT: OK, but let's keep our eye on the ball for
6 the moment. I appreciate what you've said, but I want to deal
7 first with Mr. Shapiro's motion to withdraw. You're opposing
8 it. The basis for your opposition is because you're concerned
9 that Mr. Kleinman and the corporate defendants will go
10 unrepresented and it will make it harder to enforce the consent
11 judgment and your settlement agreement, even though Mr. Shapiro
12 himself has no particular role in that at this point in that,
13 as I understand it, Mr. Kleinman now has affirmatively said to
14 the Court in his submission -- and I will confirm it with
15 him -- that he doesn't even want Mr. Shapiro to represent him,
16 so even if you wanted that to be in the case, you don't get to
17 decide who represents Mr. Kleinman.

18 MR. SLOTNICK: That's for certain. However, there are
19 two corporate defendants which, at least with respect to one,
20 Mr. Kleinman is attempting to disassociate himself. Mr.
21 Kleinman presumably can appear pro se. The two corporate
22 entities cannot. If he has authority for those two corporate
23 defendants, we should know that, and if he doesn't have
24 authority, then he has no authority to engage or disengage
25 Mr. Shapiro. I don't think Mr. Kleinman can have it in all

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1 ways.

2 THE COURT: Mr. Kleinman, first of all, I gather I'm
3 correct, am I not, that you do not want Mr. Shapiro to be
4 representing the interest of the defendants in this case going
5 forward? Is that correct?

6 MR. KLEINMAN: Yeah. I thought all along that the
7 judgment --

8 THE COURT: Mr. Kleinman, we're having a hard time
9 hearing you, and I have a court reporter. Please speak very
10 slowly and speak a little away from the receiver so that we can
11 hear you better.

12 MR. KLEINMAN: I'm sorry, your Honor. I am sick. I
13 am very sick. I am very, very sorry.

14 What I'm saying is I thought all along that Judge Maas
15 fired Mr. Shapiro at the time.

16 THE COURT: All right. Let me interrupt you. Judges
17 don't fire lawyers. I know you're a layperson, but we don't
18 fire lawyers. Lawyers make applications to judges to see if
19 they are permitted to withdraw from representation in certain
20 circumstances. In this case Mr. Shapiro made a motion to
21 withdraw because you and the corporate defendants hadn't paid
22 him. That is typically a basis on which motions to withdraw
23 are granted, but Judge Maas never entered a formal order
24 granting the motion, and that's why this is still a live issue.

25 Now you may proceed.

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1 MR. KLEINMAN: In any event, I fired him because I
2 told him that if the judge made this ruling, or at least
3 expressed that he was going to grant the motion, then I assume
4 that he is no longer in the picture, and actually, the only
5 reason Judge Maas convinced me to try to do something inside
6 these agreements is because he said that if Mr. Shapiro is no
7 longer my lawyer, I have to get new lawyers for the
8 corporation, and because I didn't have any money to get any new
9 lawyers, I agreed. So in my mind he actually granted this
10 motion in the sense that he made me go and make this deal with
11 these people.

12 THE COURT: First of all, just to be clear, it doesn't
13 appear to me -- and we'll come back to this in a few minutes --
14 that you were forced to enter into a deal. I've read the
15 transcript, and Judge Maas specifically asked you personally on
16 the record whether you agreed to the terms, and in fact, you
17 were engaged on the record in discussing what the specific
18 terms were with Judge Maas, so I don't think there was any
19 force used here or threats of any kind by anyone to force you
20 to settle this case, and you well understood what the terms
21 were and you affirmed that you accepted those terms on the
22 record.

23 MR. KLEINMAN: OK. Am I allowed to speak?

24 THE COURT: Yes. Go ahead.

25 MR. KLEINMAN: OK. The judge told me there's two

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1 options here. One is that he is going to grant the motion, and
2 that, and then if he grants the motion I have to hire new
3 lawyers. So basically I had no money to hire new lawyers. So
4 whatever these people said they want from me, I agreed because
5 the judge said that if I don't get new lawyers I will have
6 these people. So either way, there was no way for me to get
7 out of it. There was no way for me to do anything about it,
8 because the judge said very specifically I'm going to grant the
9 motion.

10 THE COURT: Let me be clear, Mr. Kleinman. There are
11 three scenarios that could take place in a lawsuit. One is
12 you're represented by counsel, you litigate a case, and you
13 lose, and therefore, judgment is entered against you.

14 The second is you negotiate, either represented by
15 counsel or at least in your individual capacity on your own,
16 and you agree to a settlement, and that's called a consent
17 judgment, which is what was entered here.

18 The third scenario is you and/or the corporate
19 defendants don't have a lawyer or no longer have a lawyer, no
20 longer put up a fight, and then a plaintiff gets what's called
21 a default judgment. There's either a contested judgment, a
22 consent judgment, or a default judgment. Any one of those
23 three could have happened in this case. You opted to settle
24 your case, and therefore, there was a consent judgment entered.
25 OK? Those are the realities that exist in February of 2017.

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1 We can't go back and revise or revisit the history of the case.
2 It is what it is.

3 We have a few things that we have to deal with today.
4 The first issue -- and I'm not going to spend more time on
5 it -- is whether Mr. Shapiro's motion to withdraw can be
6 granted. You think he isn't your lawyer to begin with.
7 Mr. Shapiro represented back in 2015 that he hasn't been paid
8 and he still hasn't been paid, and notwithstanding the fact
9 that the plaintiff objects to my discharging Mr. Shapiro
10 because they believe that it is going to make it harder for
11 them to enforce the judgment in the case, those objections are
12 overruled, and I am formally granting Mr. Shapiro's motion to
13 withdraw. I will put a written order on the docket to that
14 effect so there is absolutely no confusion in that regard.

15 Let me just state for the record that the reason for
16 the withdrawal here is that there's been a nonpayment, and it
17 is well established in case law that nonpayment of legal fees
18 is a valid basis for granting a motion to withdraw pursuant to
19 the local rules of this court, local rule 1.4 in particular.
20 That is my ruling.

21 Let me just make clear for the record, Mr. Shapiro,
22 although I believe, if I've read this correctly, that in
23 paragraph 37 of your affidavit in support of the motion, you've
24 indicated that you were not asserting any kind of a charging
25 lien. Is that correct?

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1 MR. SHAPIRO: Correct.

2 THE COURT: And am I right, just to be completely
3 comprehensive here, not only a charging lien but also not a
4 retaining lien; no liens of any kind?

5 MR. SHAPIRO: I am not asserting any liens. I am not
6 waiving my right to collect eventually, but I am not asserting
7 any kind of liens in this case.

8 THE COURT: With that in mind, Mr. Shapiro's motion is
9 granted.

10 That now means, Mr. Kleinman, you as a named defendant
11 can proceed in the lawsuit without a lawyer, but the corporate
12 defendants may not as a matter of law proceed in this lawsuit
13 without a lawyer. If you're telling me you don't have money to
14 retain a lawyer to represent you and the corporate defendants,
15 that's your position and I can't make you retain a lawyer. You
16 should understand that at least as far as the corporate
17 defendants are concerned, they must have a lawyer in all
18 further proceedings in this case, and there may well be further
19 proceedings in this case because the plaintiff has made an
20 application for contempt. Let's go to that issue next.

21 Mr. Shapiro, if you wouldn't mind, even though you've
22 been formally discharged, if I could prevail upon you to remain
23 at least for the duration of the conference, there may be
24 historical information you are privy to, and since I'm
25 brand-new to the case, it would be helpful to me.

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1 MR. SHAPIRO: Sure, your Honor. I'd be happy to, your
2 Honor.

3 THE COURT: We have an application by letter to hold
4 the defendants in contempt. As I understand it, the allegation
5 is that the defendant Craze has been distributing sound
6 recordings embodying the compositions that were identified in
7 the consent judgment and that they have been distributed in the
8 United States in violation of the consent judgment.

9 Am I right so far, Mr. Slotnick?

10 MR. SLOTNICK: Yes, your Honor.

11 THE COURT: And you want me to hold all of the named
12 defendants, I gather --

13 MR. SLOTNICK: Yes, your Honor.

14 THE COURT: -- in contempt for violating the terms of
15 the consent judgment. Is that correct?

16 MR. SLOTNICK: Correct.

17 THE COURT: All right. And you want a monetary
18 sanction of some kind because you believe this is a willful
19 infringement and a violation of the consent judgment.

20 MR. SLOTNICK: Correct.

21 THE COURT: You have not filed a memorandum of law
22 correct?

23 MR. SLOTNICK: That's correct.

24 THE COURT: You have not filed any affidavits in
25 support of this?

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1 MR. SLOTNICK: That's correct.

2 THE COURT: You are thinking that the Court can impose
3 sanctions and award contempt on the basis of a one-and-a-half
4 page, single-spaced letter and an attachment of a picture
5 taken, presumably off of someone's phone, of an iTunes page
6 without having it authenticated in any way, and you think that
7 is a sufficient basis for the Court to render the draconian
8 relief you are seeking in this case?

9 MR. SLOTNICK: No, your Honor. We believe that a
10 full-fledged motion should be submitted to your Honor with
11 declarations with a memorandum of law. We don't believe, and
12 were not expecting the Court to rule on this today. We knew
13 that there was going to be a conference. We anticipated one
14 based upon Mr. Shapiro's application. We thought it best to
15 have everything put in front of your Honor at one time. We
16 certainly don't believe it's appropriate for the Court to
17 consider this without substantiation.

18 We've been in contact with Apple for its iTunes
19 services. We anticipate receiving additional documentation
20 from Apple, although what we already have is confirmed that,
21 according to their records, they were authorized by defendant
22 Craze to put the current album up for sale.

23 THE COURT: When you say the current album, can you
24 educate me what you mean by that?

25 MR. SLOTNICK: Yes. The original album that was sued

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1 on was an Aaliyah album. The current album, I haven't seen all
2 the tracks, but it's a reconfiguration. It uses some of the
3 same songs, some other songs, but certainly songs that were
4 part of this litigation in addition to other songs that are
5 also owned by Reservoir, which were not part of the original
6 litigation.

7 THE COURT: If they weren't part of the original
8 litigation --

9 MR. SLOTNICK: We're not seeking sanctions with
10 respect to anything that was not part of the original lawsuit.
11 We're seeking them only with respect to those compositions that
12 are part of this current litigation.

13 THE COURT: You have read what Mr. Kleinman says about
14 all of this in his letter?

15 MR. SLOTNICK: I have.

16 THE COURT: Have you talked to him about any of this?

17 MR. SLOTNICK: I have not spoken to Mr. Kleinman. We
18 didn't receive this until middle of the afternoon yesterday.

19 THE COURT: Here's what we're going to do on this.
20 I'm going to deny the application to the extent it was made as
21 a formal application, but I'm denying it without prejudice
22 because I think the record was not sufficiently developed. If
23 you want to make a formal motion for contempt, you can do so.
24 I'm not going to set a schedule; you can make it when you want
25 to make it, if you want to make it. I would also require that

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1 before you make it you have what I will characterize as a
2 meet-and-confer with Mr. Kleinman, who at least at the moment
3 is proceeding pro se and may well not have a lawyer
4 representing him, and you may or may not be convinced by what
5 he tells you that is in his letter or otherwise.

6 Mr. Kleinman, if you have any information or documents
7 and the like that you are able to share with Mr. Slotnick and
8 Ms. Chen, I would strongly encourage you to do that because it
9 may potentially obviate the need for a contempt application to
10 be made, and I assume all other things being equal, you would
11 prefer not to have a contempt application made in federal
12 court. Correct?

13 MR. KLEINMAN: That's correct.

14 THE COURT: All right. I think for today's purposes,
15 all I need to do is what I have just said in that regard. But
16 obviously, Mr. Slotnick, you are free to make a motion for
17 contempt on a more developed record whenever you think that's
18 appropriate.

19 MR. SLOTNICK: Thank you, your Honor.

20 One request, though. We do not believe we have
21 suitable contact information for Mr. Kleinman or for the
22 defendants for that matter, and I think to be fair to the
23 corporate defendants, we should have some ability to reach out
24 to them. We have addresses in the settlement agreement, just
25 street addresses. We don't have email addresses or contact

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1 information with respect to people. We don't have telephone
2 numbers. Presumably at a meet-and-confer, I would like to
3 include the representatives of the corporate defendants as
4 well, and I would like, if possible, Mr. Kleinman to provide us
5 with full contact information for himself, for Craze, and for
6 HipHopLand so that we can try to have a meaningful
7 meet-and-confer as opposed to just sending emails in the hopes
8 that at some point somebody responds.

9 THE COURT: Mr. Kleinman, what are the best ways for
10 Mr. Slotnick and Ms. Chen to have further contact with you, as
11 well as Craze and HipHopLand?

12 MR. KLEINMAN: They have my email. I don't know what
13 is the story.

14 THE COURT: Can you state that email address for the
15 record?

16 MR. KLEINMAN: It's samkl@me.com.

17 THE COURT: Is there any email address at either Craze
18 or HipHopLand that you can provide in addition to your own
19 individual email address?

20 MR. KLEINMAN: I will give it them. They have it as
21 well.

22 THE COURT: Are there any other individuals at either
23 HipHopLand or Craze that should be included in any telephone
24 conference that Mr. Slotnick and Ms. Chen would like to have
25 with you and any of your colleagues? Who else should be

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1 included in that?

2 MR. KLEINMAN: Technically speaking, the United
3 Kingdom government is the contact register, they should be the
4 ones that he should contact.

5 THE COURT: The United Kingdom government? I didn't
6 understand that. What do you mean?

7 MR. KLEINMAN: Yeah, well, the United Kingdom
8 government has filed that from a certain point, anything of
9 importance should be addressed to them.

10 THE COURT: What is the relationship between Craze
11 Productions and HipHopLand to the United Kingdom government?
12 I'm not understanding that.

13 MR. KLEINMAN: Because both of them are English
14 corporations, and they are not United States corporations.

15 THE COURT: But they're private corporations, are they
16 not?

17 MR. KLEINMAN: They are, but the United Kingdom
18 government, for whatever reason, filed last year in 2016, a
19 notice of contempt, it's called, which is available on the
20 Internet. Basically for any issues of this type, he has to
21 contact them. That's according to the notice they filed.

22 THE COURT: All right. You're saying things that are
23 well above my pay grade. I don't really understand any of
24 this, but I'm going to leave this to Mr. Slotnick and Ms. Chen.

25 You have Mr. Kleinman's email address. Do you need

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1 his address as well? Do you have that?

2 MR. SLOTNICK: The last address that we had for Mr.
3 Kleinman was, I believe, Great Russell Street in the U.K. Is
4 that still correct?

5 MR. KLEINMAN: I will provide a new address in another
6 country when I talk to Mr. Slotnick next week.

7 THE COURT: No. I would like you to provide it now,
8 actually, because the Court may need to have it as well, since
9 if you're proceeding pro se, in addition to Mr. Slotnick having
10 a way to reach you, the Court may, because while we were
11 permissive in allowing you to email certain things to the
12 Court, that is generally not the way things are litigated in
13 this Court. Usually things are litigated electronically. We
14 will put on the docket your February 2 letter for purposes of
15 including it in the record, but generally speaking, we need to
16 be able to mail things to you, not just send things to you by
17 email. If you could please state your current address for the
18 record so that the Court has it as well the plaintiff has it.

19 MR. KLEINMAN: I would appreciate it, I will give it
20 as well now, but I have the option to change it next week
21 because the other address is actually more correct. I just
22 want to make certain it's OK. I wasn't prepared for this
23 question.

24 THE COURT: You're not prepared to tell the Court what
25 your street address is?

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1 MR. KLEINMAN: No. I am prepared. There is no
2 problem. I'm just saying if there is another address, I will
3 provide it to the Court next week. The address that was 10
4 Great Russell Street, London, for me, just for me, that's a
5 correct address.

6 THE COURT: Mr. Slotnick, do you have addresses for
7 Craze Productions and HipHopLand?

8 MR. SLOTNICK: We have addresses that were in the
9 settlement agreement a little bit more than a year ago. If
10 those are still accurate, then those are still accurate.

11 THE COURT: Why don't you assume they are until you
12 find out they're not, and if they're not and you need relief in
13 some respect, you'll tell me, although technically speaking
14 they're not represented by anyone right now, and they're going
15 to be in default if they aren't represented by counsel.

16 Mr. Kleinman, just to be clear, in our court there is
17 a requirement that any corporate entity must have a lawyer; it
18 cannot proceed without a lawyer, so to the extent there are
19 going to be further proceedings in the court -- and there may
20 be or there may not be, I don't know -- but to the extent there
21 are going to be, you can represent yourself if you choose to,
22 but Craze and HipHopLand cannot represent themselves, so you
23 would need to get a lawyer to represent them if there are
24 further legal proceedings. Otherwise, they would be considered
25 to be in default. Do you understand?

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1 MR. KLEINMAN: I understand, but I have written to the
2 Court the whole story with Craze Productions. For practical
3 purposes, I'm not even authorized to appoint a lawyer for them,
4 so I have explained that to the Court.

5 THE COURT: I have read the letter. Perhaps now we
6 will move on to that last issue that I identified, which is it
7 seems to me what you have tried to do as best you can as a
8 layperson, beginning on the third page of your letter where you
9 talk about the judgment should be deemed null and void, and you
10 then you talk about not being authorized to sign the settlement
11 or the confession of judgment for a whole bunch of reasons,
12 none of this came up during the course of the proceeding before
13 Judge Maas, I feel confident in saying. There is nothing in
14 the transcript of the November 10 proceeding before Judge Maas
15 to suggest that. In fact, as I reviewed that transcript, Judge
16 Maas noted that you were on the telephone and then he went
17 through the terms of the settlement agreement, and you
18 participated in that discussion yourself. In fact, I would say
19 you participated in the discussion of the terms, frankly, more
20 than Mr. Shapiro did. At the conclusion of the proceeding
21 before Judge Maas, he said to you, "Those terms are acceptable
22 to you, Mr. Kleinman?" And you said yes.

23 What ended up happening after that is the
24 representative of Reservoir and Mr. Slotnick and Mr. Shapiro
25 were all present, and they all signed a consent order of

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1 discontinuance, but since you were not physically present, Mr.
2 Kleinman, what Judge Maas said is, "Mr. Kleinman obviously is
3 not here to sign that; and counsel, I assume, will within 30,
4 days finalize the paperwork and submit a proposed judgment to
5 Judge Woods." The parties then consented to the case being
6 before Judge Maas for all purposes, so it wasn't in the end
7 submitted to Judge Woods. It was submitted to Judge Maas.
8 Judge Maas then signed the consent judgment, and the consent
9 judgment was signed by Mr. Slotnick on behalf of the plaintiff
10 and Mr. Shapiro on behalf of the defendants. That was done
11 back in January of last year.

12 The way I read what you are saying is that you want to
13 set aside this settlement agreement and the consent judgment.
14 The rule, I think, that applies here is Rule 60(b) of the
15 Federal Rules of Civil Procedure. The rules allow a court to
16 relieve a party or its legal representative from a judgment or
17 order or a proceeding on a number of grounds, including
18 mistake, inadvertence, fraud, misrepresentation, or misconduct.
19 I don't know that you have really articulated any of those
20 grounds in particular, but it strikes me that in any event
21 you're seeking to set aside the consent judgment. On the basis
22 of what I have reviewed, I'll say the following:

23 It's not as a threshold matter clear whether state law
24 or federal law would apply when we are deciding the question of
25 whether a settlement agreement in these circumstances should be

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1 vacated. The Second Circuit Court of Appeals has explicitly
2 held whether state contract law as opposed to federal common
3 law applies to agreements settling federal claims, but the
4 circuit has often observed that with respect to fundamental
5 contract principles there is no material difference between New
6 York law and federal law. In most circumstances, as I know --
7 and I've had this issue in the past -- the court has looked to
8 state law. I'm going to look to New York State law here and a
9 settlement agreement under New York State law is interpreted
10 according to general principles of contract law, and settlement
11 agreements are strongly favored by New York courts and may not
12 be lightly cast aside. It is well settled that a settlement
13 agreement is presumptively binding and conclusive. When a
14 party makes a deliberate, strategic choice to settle, a court
15 cannot relieve him of that choice simply because his assessment
16 of the consequences was incorrect. I'm quoting from a case
17 called *Powell v. Omnicom*, 497 F.3d 124, (2d Cir. 2007).
18 "Parties may enter into a binding agreement orally and the
19 intention to commit an agreement to writing standing alone will
20 not prevent contract formation. Even if the agreement is never
21 reduced to writing, it is enforceable, as long as it was
22 voluntary, clear, explicit and unqualified when entered on the
23 record in open court."

24 In these circumstances it seems to me that the oral
25 agreement was entered on the record in a voluntary, clear,

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1 explicit and unqualified way. The parties not only entered
2 into that agreement orally, but then they did in fact commit it
3 to writing in the form of the consent judgment. In order to
4 overcome, therefore, the presumption of the enforceability and
5 to set aside a settlement agreement under New York law, someone
6 in the shoes of Mr. Kleinman would bear the burden of
7 establishing that there was a unilateral mistake, coupled with
8 some kind of concealment by the knowing party or a mutual
9 mistake, but nothing in the submission Mr. Kleinman has made to
10 the Court has demonstrated either fraud or mutual mistake or
11 inadvertence or anything else for that matter.

12 Without anything further and notwithstanding his
13 representation now that there may be some other people who
14 should have been involved to represent the interest of Craze
15 and/or HipHopLand, to the extent Mr. Kleinman is making an
16 application to the Court to vacate the settlement, it is
17 denied.

18 MR. KLEINMAN: Am I allowed to say anything?

19 THE COURT: You may respond, but I have ruled. I'm
20 happy to have you make a further submission and a more formal
21 application, but on the basis of what you submitted and my
22 review of the record, I don't think there's a sufficient basis.
23 You cannot say a year after a settlement has been entered into,
24 Actually, wait a minute, I didn't have authority. There is no
25 basis for you to do that in this case, as I understand the

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1 facts of the case. You should have said that at the time of
2 the settlement conference. You should have said that at the
3 time the consent judgment was entered into. There is nothing
4 in the record to suggest that Mr. Shapiro did not have
5 authority to sign the consent judgment, and that is reposed in
6 him based on the proceedings that took place before Judge Maas
7 and that were memorialized in the transcript of November 10,
8 2015.

9 Go right ahead, Mr. Kleinman.

10 MR. KLEINMAN: We're dealing with an English
11 corporation, and in England a corporation have their own
12 situation and you can represent them. I was not aware that the
13 director, who was not me, for Craze Productions also owned or
14 took somehow the stock of the company. Therefore, I had
15 basically, aside from being director, I had nothing, no
16 authority whatsoever to sign anything by English law -- if
17 necessary, I can bring you a certified opinion from English
18 lawyer from England, because this is what we are talking about,
19 about the corporation from England. I did not know that he
20 took the stock. It was buried inside hundreds of pages of the
21 corporation. He took it against my wishes. I didn't have a
22 clue about it. So whatever I signed, by English law, and I'm
23 prepared to bring an opinion, there is no obligation for Craze
24 Productions because it was like a guy on the street signing it.
25 I was not allowed, by English law, to sign anything for Craze

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1 Productions. Actually, I was not even allowed to hire
2 Mr. Shapiro in 2013 because in 2013, before the lawsuit reached
3 us, there was a new director, and apparently he sold -- I don't
4 know what he did -- he took the stock. From that moment on, by
5 English law, and I'm prepared to bring a certified opinion from
6 England, I had no business to hire Mr. Shapiro.

7 THE COURT: Why are you raising this in 2017? I don't
8 understand why you're now raising this for the first time, and
9 by the way, you only raised it because you were responding to
10 other letters. You didn't even affirmatively make any
11 application to the Court. You're only including this because
12 you are otherwise responding to the application for contempt.
13 I'm quite baffled, frankly, by everything you're saying because
14 if this were the case, I don't understand why you wouldn't have
15 said to Mr. Shapiro back in 2013, I'm hiring you just for me,
16 if you had no authority. Otherwise, how could he possibly know
17 that you didn't have the authority? Why would you not have
18 figured this out for yourself back at the time these companies
19 were sued four years ago?

20 MR. KLEINMAN: OK. First of all, we're not discussing
21 HipHopLand. We're only discussing Craze Productions. I am not
22 contesting anything about HipHopLand. OK?

23 No. 2, as I said, an owner of a company can sign for
24 the company, or a director of the company -- in England. This
25 is an English corporation. I was not aware that he took the

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1 one stock that the company has. I only found out sometime ago
2 when I went through hundreds of pages of the corporation --
3 it's all online, by the way. And that's when I discovered only
4 one petition that he says he has the stock. That's why I
5 didn't make anything of that all of this time. For all
6 practical purposes, my signature for Craze Productions is
7 useless by English law. I do not, I cannot represent Craze
8 Productions at all to sign these agreements. I'm not even
9 allowed to hire a lawyer. I can bring an opinion to that
10 effect.

11 THE COURT: Mr. Kleinman, let me interrupt you. The
12 only thing for today is to the extent you're trying to vacate
13 the consent judgment and the settlement agreement, I'm denying
14 it. I'm denying it without prejudice. If you want to hire a
15 lawyer to represent Craze Productions, or if someone else
16 should be hiring a lawyer to represent Craze Productions
17 because you do not have authority, then you can so advise them
18 of this proceeding. If Mr. Slotnick does choose to initiate a
19 contempt proceeding and he does choose to initiate it against
20 all three defendants, then you in your individual capacity are
21 legally authorized to respond to it. The two corporate
22 entities are not. Whether you are or are not authorized to
23 represent Craze's interest, you will not have any standing to
24 object to a contempt if it is sought against Craze. Only a
25 lawyer could represent its interest. If you're not the one to

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1 make those arrangements, then you will have to tell whoever it
2 is to make those arrangements on penalty of potential default
3 and/or contempt, depending on whether the application gets
4 made.

5 I can't predict the future and Mr. Slotnick's client
6 may decide that it's chasing rainbows to pursue a contempt
7 proceeding here. I don't know. Sometimes there is value to
8 initiating certain proceedings; sometimes it is a colossal
9 waste of time. The only thing that will happen is
10 Mr. Slotnick's clients will have to pay Mr. Slotnick, and they
11 may wish not to do that. They will have to make a judgment
12 down the road. In the short term, however, I do think it is in
13 your interest, and anyone else from Craze that you choose to
14 enlist, to have a conference call with Mr. Slotnick in the next
15 week or two to try to sort all of this out, because from my
16 reading of your letter, it sounds to me your position is there
17 is an innocent explanation as to how this may have found its
18 way onto the iTunes website, and if Mr. Slotnick and his client
19 are satisfied with that, that may be the end of it, at least as
20 far as that's concerned.

21 For my purposes, all I can do is rule on applications
22 made to the Court. To the extent you are proceeding pro se,
23 and I am liberally construing your letter as a motion to vacate
24 the settlement agreement, as I said earlier, it's denied. It's
25 denied without prejudice to the extent you want to make a

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1 renewed application in particular on the basis of Craze
2 Productions. Am I clear?

3 MR. KLEINMAN: Yes.

4 THE COURT: Is there anything else we need to address
5 at the conference today?

6 MR. SLOTNICK: Your Honor, we submitted, I believe a
7 week or so ago, a confession of judgment to the Court. That
8 just needs to be addressed at some point. I don't think that's
9 before your Honor today.

10 THE COURT: I have never seen it and I'm not sure that
11 is something that I administer. I think that's something that
12 is dealt with in the clerk's office. I would direct you there
13 in the first instance.

14 MR. SLOTNICK: Yes, we had sent it to the clerk's
15 office, but I guess we will hear about that in due course from
16 the clerk's office.

17 THE COURT: I would talk to the orders and judgments
18 clerk in the clerk of court's Office.

19 MR. SLOTNICK: Thank you, your Honor.

20 THE COURT: Anything else?

21 MR. SLOTNICK: No, your Honor.

22 THE COURT: Mr. Shapiro, anything else?

23 MR. SHAPIRO: No, your Honor.

24 THE COURT: Mr. Kleinman, anything else?

25 MR. KLEINMAN: No.

THE COURT: Have a good weekend everyone. (Adjourned)